



THE ANALYSIS OF CIRCUMSTANCES MITIGATING PUNISHMENT NOT REGULATED BY THE CRIMINAL CODE

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Article history:	Abstract:
Received: 7 th May 2024 Accepted: 4 th June 2024	This article discusses circumstances that are recognized by courts as mitigating punishment in Uzbekistan for committing theft. The article uses around 50 judicial rulings to identify most common circumstances mitigating punishment not explicitly outlined in the Criminal Code of Uzbekistan, rather formed by courts. The article also sheds light on the essence of these circumstances, provides feasible suggestions and urges courts to thoughtfully recognize and justify them in their rulings.

Keywords: Mitigating circumstances, punishment, judgment, cases, theft

INTRODUCTION

In 2024, the court in Besharik district while ruling over Case 1-1506-2401/120, recognized the fact of being a female as a circumstance mitigating punishment [1]. However, the court did not motivate its decision in the verdict. In our opinion, several reasons could support such a judgment. One possible reason is the distinctive characteristics of the Criminal Code of Uzbekistan (Code), which allows for positive discrimination and reduces the severity of its regulations towards women. For example, Article 45¹ of the Code forbids imposing mandatory community service on pregnant women and women with children under three years of age [2]. Another potential reason may be that in Uzbekistan, the majority of crimes are committed by males. According to the Statistics Agency, in January-September 2023, the total number of women who committed crimes amounted to 7,657 individuals. Along with this, the number of men who committed crimes reached 54,575 individuals [3]. Thus, it is rare for women to engage in criminal activities. Taking into account these factors, the court acknowledged that being a female could mitigate punishment.

This article analyses the recent judicial practice of recognizing circumstances that mitigate punishment by courts. It also sheds light on circumstances mitigating punishment with a comprehensive analysis of the criminal legislation, Supreme Court's Resolution and scientific doctrines

CIRCUMSTANCES MITIGATING PUNISHMENT

We suggest dividing circumstances that mitigate punishment into two main categories:

- circumstances established in the Criminal Code;
- circumstances not established in the Criminal Code.

The first category involves only 9 main circumstances mitigating punishment as stipulated in Article 55 of the Code [4]. These circumstances are mandatory for courts to consider when assigning punishment in individual cases, according to Article 54 of the Code. The following circumstances fall under the first category:

- 1) confession, sincere repentance or active assistance in solving the crime;*
- 2) voluntary redress of the harm caused;*
- 3) commission of a crime due to difficult personal, family or other conditions;*
- 4) committing a crime under duress or due to financial, official or other dependence;*
- 5) committing a crime in a state of strong emotional disturbance caused by violence, grave insult or other unlawful actions of the victim;*
- 6) committing a crime when exceeding the legal limits of necessary defense, extreme necessity, causing harm during the detention of a person who has committed a socially dangerous act, justified professional or economic risk;*
- 7) commission of a crime by a minor;*
- 8) commission of a crime by a pregnant woman;*
- 9) commission of a crime under the influence of illegal or immoral behavior of the victim.*

The second category includes circumstances determined by either the Plenum of the Supreme Court or the courts themselves. Article 55 of the Code grants courts broad discretion to recognize any circumstance as mitigating punishment. In such instances, courts are required to justify such recognition in their verdicts.

According to the Supreme Court Plenum's Resolution "On the practice of imposing criminal punishment by courts", circumstances such as committing a crime for the first time posing slight public



danger, the presence of a young child with the defendant, committing a crime out of compassion, and providing immediate medical and other assistance to the victim after the crime may be considered as mitigating circumstances [5].

Individual Cases

Case 1. The court in Tashkent region handling a theft case involving A.I., who committed the crime under Article 169 (provisions "b" and "d") of the Code, recognized the following circumstances as mitigating punishment: A.I.'s health condition (his ear loss) and his status as a university student [6].

Case 2. Another court in Khonka (Khorezm) presiding over a theft case involving K.R. determined that the following circumstances were mitigating:

- 1) the accused's positive conduct before and after committing the crime;
- 2) his financial situation and capacity;
- 3) the absence of a claim from a civil plaintiff [7].

Case 3. The court in Jomboy (Samarkand) concluded that the accused was engaged in socially useful work [8]. Therefore, this activity can be recognized as mitigating punishment.

In all of these cases, the courts did not provide explanations or rationales for their rulings. The questions of why a person's student status, health condition, financial capacity, or other circumstances should be considered as mitigating circumstances remain unanswered. In other words, courts failed to provide the rationale for such recognition, despite it being a requirement under Article 25 of the Law "On Courts," which mandates that the clarifications of the Plenum of the Supreme Court regarding the application of legislation must be adhered to by courts [9].

INTERNATIONAL EXPERIENCE

Analyzing the international experience of various countries in terms of determining mitigating circumstances in criminal cases is crucial to ensuring more accurate and reliable results. By examining the approaches taken by courts in different jurisdictions, it becomes possible to identify common trends and factors that can inform more effective recommendations.

In Russia, courts have recognized several mitigating circumstances that are not explicitly listed in the Criminal Code [10]. These can include circumstances such as admissions of guilt, displays of remorse, positive characteristics of the accused, disabilities, health conditions, lack of prior criminal record, and age. By taking these circumstances into account, judges are able to make more informed decisions regarding sentencing.

Similarly, in Kazakhstan, the law allows for any mitigating circumstance, whether specified by law or not, to be considered in determining the appropriate punishment [11]. This flexible approach implies that a range of circumstances can be taken into consideration, such as youth, clean criminal record, stable work and family life, and positive community standing. By looking at the offender's character before the crime, a more holistic view can be taken in considering appropriate sentencing.

In the United States, common mitigating circumstances recognized by courts include lack of a prior criminal record, minor role in the offense, culpability of the victim, past circumstances such as abuse leading to criminal activity, circumstances at the time of the offense such as provocation or emotional problems, mental or physical illness, and genuine remorse [12]. By considering these circumstances, judges can better assess the individual circumstances of each case and determine an appropriate sentence.

In the UK, courts also recognize a range of mitigating circumstances, including a greater degree of provocation, mental illness or disability, youth or age affecting individual responsibility, minor role in the offense, genuine remorse, admissions to police, and cooperation with authorities [13]. By taking these circumstances into consideration, judges can ensure that sentencing reflects the specific circumstances of each case and the individual characteristics of the offender.

THE ESSENCE OF CIRCUMSTANCES MITIGATING PUNISHMENT

From the cases mentioned above, it is evident that courts recognize various circumstances as mitigating punishment. However, these recognitions lack adequate motivation and explanation as required by law. In our view, it is crucial to encourage courts to justify the recognition of any circumstance as mitigating punishment. The following points are of significant importance:

First, the presence of mitigating circumstances suggests a reduced level of public harm caused by the offense and reflects the characteristics of the perpetrator. The principle of fairness mandates courts to impose penalties that are proportionate to the severity of the crime, the level of culpability, and the societal danger posed by the individual. Simply put, the lower the public harm caused by the crime and the characteristics of the perpetrator, the milder the punishment.



Second, circumstances mitigating punishment form the grounds for courts to impose a less severe punishment on the perpetrator, enabling them to select from the range of sanctions specified in the Criminal Code. It means that courts can choose one less severe sanction out of five. For instance, for committing theft 5 types of punishment are outlined in Article 169 (part 1) of the Code: **fin**es (up to 17 million soums), **mandatory community service** (up to 360 hours), **correctional labor** (up to 2 years), **restriction of liberty** (from 1 to 3 years) and **imprisonment** (up to 3 years). Courts may opt for fines or reduce their magnitude (up to the minimum). For example, they could impose a six-month restriction of liberty despite the minimum term being one year.

Third, these circumstances also justify the application of a milder penalty under Article 57 of the Code. This allows courts to choose penalties not explicitly listed in a specific article of the Criminal Code. For instance, if imprisonment for 8 to 15 years is stipulated, the court may opt for restriction of liberty by considering mitigating circumstances.

Finally, these circumstances can be the basis for granting a conditional sentence to an offender, indicating the court's belief in the possibility of rehabilitating the convicted individual without imprisonment (Article 72).

All of these "privileges" may be applied unjustly. A notable example of this can be the case of a judge soliciting a bribe for imposing a less severe punishment on the convicted person [14]. In other words, circumstances that mitigate punishment can open the doors for corrupt conduct and activities. Even worse is the fact that it is nearly impossible to identify this kind of corrupt behavior of judges due to broad discretion granted by law. Therefore, judges should recognize factors as mitigating very wisely and comply with the clarifications of the Supreme Court Plenum's Resolution.

RECOMMENDATIONS

In order to ensure that courts uphold the clarifications provided in the Supreme Court Plenum's Resolution, several key proposals can be put forward for consideration:

I. Enhanced Judicial Training: Judges should undergo comprehensive training programs that focus on the significance of providing detailed justifications for the recognition of mitigating circumstances. This training should underscore the importance of adhering to the guidelines set forth by the Supreme Court Plenum and uphold the principles outlined in the Criminal Code.

II. Stricter Oversight and Accountability: The implementation of more robust oversight mechanisms is essential to reduce the risk of corruption and ensure that judicial discretion is exercised fairly and consistently. Regular audits of judicial decisions and strengthened mechanisms for reporting and investigating potential corruption can help maintain the integrity of the judicial process.

III. Legislative Reforms: It is advisable to consider refining the legislative framework to establish clearer guidelines on what qualifies as a mitigating circumstance and the extent to which it should impact sentencing decisions. This can help minimize the potential for subjective interpretation and promote a more uniform application of the law across different cases.

IV. Establishing Recommended Factors: The Plenum of the Supreme Court should compile a comprehensive list of circumstances that are recognized as mitigating punishment, drawing from the judgments of Uzbek courts as well as insights from international practices. While the current resolution provides four circumstances, expanding this list based on a broader range of sources can enhance the consistency and effectiveness of the judicial decision-making process.

CONCLUSION

This article aimed to analyze the recent judicial practice of courts recognizing circumstances as mitigating that are not established in the Criminal Code. The analysis revealed that courts recognized the following circumstances as mitigating punishment: health problems; student status; positive conduct pre and post-crime; financial status; absence of civil claims, and engagement in socially beneficial activities. Remarkably, none of the courts provided reasoned justifications for their decisions, thus failing to comply with the Supreme Court Plenum's Resolution "On the practice of imposing criminal punishment by courts."

Courts should be encouraged to recognize factors as mitigating punishment wisely since they may lead to serious legal repercussions for our society. By unfairly imposing a lenient punishment on the offender, courts cannot ensure fairness in the criminal justice system, and guarantee victims' rights.

REFERENCES:

1. Case 1-1506-2401/120; URL: <https://drive.google.com/file/d/1g5OgE-hnnPIV0tX6Bcpi6DmNg7K-ZM8n/view>
2. Criminal Code of the Republic of Uzbekistan // National legislation database, 16.03.2024 r., №



- 03/24/921/0219. URL:
<https://lex.uz/docs/111457>
3. Statistics of crimes for 2023. URL:
https://drive.google.com/file/d/1HoDQd9Z_ikhXtDC5VPwsZCVtGdnbd99d/view?usp=sharing
 4. Criminal Code of the Republic of Uzbekistan // National legislation database, 16.03.2024 г., № 03/24/921/0219. URL:
<https://lex.uz/docs/111457>
 5. Supreme Court Plenum's Resolution "On the practice of imposing criminal punishment by courts". URL: <https://lex.uz/docs/1455974>
 6. Case 1-1116-2402/74; URL:
<https://drive.google.com/file/d/1hAI8ghBvCQ8buBwwIOEGas6mxj5ojNP8/view?usp=sharing>
 7. Case 1-2209-2401/40; URL:
<https://drive.google.com/file/d/10hsSLf4kJqlcSMM65mxHX1CCnaYWQ-L-/view?usp=sharing>
 8. Case 1-1406-2402/97; URL:
<https://drive.google.com/file/d/1iZz5DFi5Q0T723T8WfG5HB-SI3zS6O1B/view?usp=sharing>
 9. The Law "On Courts" // National legislation database, 03/02/2024, No. 03/24/917/0170; URL: <https://lex.uz/ru/docs/6118937>
 10. Швец Александра Валерьевна, Турицын Дмитрий Александрович Понятие, виды и общая характеристика обстоятельств, смягчающих наказание // Право и практика. 2014. №4. URL:
<https://cyberleninka.ru/article/n/ponyatie-vidy-i-obschaya-harakteristika-obstoyatelstv-smuyagchayuschih-nakazanie> (дата обращения: 18.07.2024).
 11. Аширбеков А.И. К вопросу об учете смягчающих и отягчающих обстоятельств; URL:
https://online.zakon.kz/Document/?doc_id=33977435&pos=6;-108#pos=6;-108
 12. Lockett v. Ohio, 438 U.S. 586 (1978); URL:
<https://supreme.justia.com/cases/federal/us/438/586/>
 13. <https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/aggravating-and-mitigating-factors/>
 14. Court chairman detained in Namangan for accepting \$2,000 in bribe; URL:
<https://kun.uz/en/33776240>